HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 486 of 2007

Between:

Juvvanapudi Lakshmayya & others

… Appellants

And

The District Collector,
Krishna at Machilipatnam & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri B. Shiv Kumar

June 25, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 27.12.2005 passed by the learned Single Judge in Writ Petition No.27008 of 2005 whereby he refused to interfere with the action of the official respondents to lay the road in Revenue Survey Nos.17 and 36 of

Atchampalem Village, Ghantasala Mandal, Krishna District.

The appellants' challenge to the laying of road through Revenue Survey Nos.17 and 36, which are classified as drain poramboke and donka poramboke respectively was founded on the following assertions:

1) that they are in possession of the land in question for more than 60 years;
2) that application dated 30.3.1988 made by them to Mandal Revenue Officer, Ghantasala Mandal for assignment of land has not been decided so far;
3) that the Executive Engineer (Drainage Division) and the Sarpanch of the Gram Panchayat did not raise any objection to the assignment of land in their favour;
4) that the request made by respondent No.6 – R. Narayana Rao for laying road through Revenue Survey Nos.17 and 36 was rejected by the Mandal Revenue Officer on the ground that there already exist four donka roads;
5) that Joint Collector and Additional District Magistrate, Krishna, Machilipatnam (respondent No.2 herein) arbitrarily overturned the decision of the Mandal Revenue Officer and issued direction for providing 30 links pathway and 5 links field channel in Revenue Survey Nos.17 and 36.

The learned Single Judge referred to order dated 18.6.2004 passed by respondent No.2 and dismissed the writ petition by recording the following observations:

> "A perusal of the proceedings of the Joint Collector dated 18.6.2004 would show that about 20 villagers of Atchampalem village filed a representation before the Joint Collector requesting for eviction of encroachers in the land in R.S.Nos.17 and 36 for the purpose of pathway and also for restoration of field channel. The Revenue Divisional Officer (RDO), Bandar conducted enquiry on the representation and submitted report to the effect that there is a drain course in R.S.No.22 and a small drain course below R.S.Nos.35, 131 and 129, which is a donka. The small drain course started below the

R.S.No.131 ended upto R.S.No.35 merged with the big drain course in R.S.No.22 and that R.S.No.17 is classified as drain poramboke whereas R.S.No.36 is classified as pathway poramboke. The RDO also conducted field inspection during which he asked the encroachers to give seven links field channel and a part of the donka poramboke, in vain. Therefore, he suggested to provide 30 links pathway and five links field channel for both the porambokes for which the land is earmarked. After considering the same, a direction was issued to the second respondent to take up the work as noticed herein above. The order of the Joint Collector would show that the land encroached upon by the petitioners is classified as drain poramboke and donka poramboke (pathway poramboke) and therefore, even if the petitioners' application for assignment is pending, the same does not in any manner prohibit the respondents to take up the work. As per Board Standing Order 15, the assignment of donka porambokes, drain porakbokes and such other lands is prohibited. The petitioners, therefore, may make an application for assignment of land, which is classified as assessed waste and is not intended for other purposes. When the land, which is earmarked as donka poramboke and drain poramboke, is being restored to its original possession, this Court cannot interfere in exercise of jurisdiction under Article 226 of Constitution of India."

Shri B. Shiva Kumar, learned counsel for the appellants laid considerable emphasis on communication dated 30.12.1999 sent by Revenue Divisional Officer, Machilipatnam to Mandal Revenue Officer, Ghantasala and argued that the learned Single Judge committed a serious error by refusing to nullify order dated 18.6.2004 passed by respondent No.2 ignoring the fact that four donka roads are already in existence.

Learned counsel admitted that the appellants do not have any vested right over the land in question, but argued that the long possession of 60 years is, by itself, sufficient for assignment of land to the appellants more so because they fall in the category of landless poor. Learned counsel emphasised that his clients have been cultivating the land for all these years and argued that they are entitled to assignment of land as of right. He further argued that order dated 18.6.2004 is liable to be quashed because, while ordering laying of link road, respondent No.2 overlooked the factum of pendency of

application made by the appellants for assignment of land.

We have given serious thought to the arguments of the learned counsel, but do not find any merit in either of them. The appellants have not produced any evidence before the Court to prima facie prove that they have even a semblance of right over the land occupied by them. Rather, a perusal of order dated 18.6.2004 makes it clear that the appellants are in unauthorised occupation of the land, which is classified as drain and donka porambokes. This being the position, we do not find any merit in their claim for assignment of land. The record of the case also shows that on an earlier occasion, the appellants were evicted from the land in question by being treated as unauthorised occupants, but, after sometime, they re-occupied the land and claimed assignment. As per Board Standing Order No.15, the assignment of donka and drain porambokes is prohibited. Therefore, the learned Single Judge did not commit any error by refusing to entertain their prayer for issue of a mandamus to the concerned respondents to assign the disputed land to the appellants.

The direction given by respondent No.2 for laying link road through Revenue Survey Nos.17 and 36 cannot be nullified because the appellants have failed to show that construction of road through the two revenue survey numbers is contrary to any statutory provision.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.929 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

June 25, 2007

C.V. NAGARJUNA REDDY, J

svs